IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICTIONS NO. 188, 189 AND 190 OF 2006.

Shri Anthony Carvalho,
Cuncolim, Salcete, Goa. ..... Applicant.

Versus

STATE,
Represented by
Public Prosecutor. ..... Respondent.

Shri A. Viegas, Advocate for the Applicant.

Ms. W. Coutinho, P.P. For the State-Respondent.

CORAM: A. P. LAVANDE, J.

DATE: 28th APRIL, 2006.

ORAL ORDER:

All the three applications are being disposed of by a common Order, since they have been filed in appeal preferred by the appellant against the Judgment and Order of conviction under Section 304 Part II of the Indian Penal Code passed by the Sessions Judge, South Goa, Margao in Sessions Case No. 4/2003. The appellant was initially charged for having committed an offence under Section 302 I.P.C. The trial Judge, held the appellant guilty for offence committed under Section 304 Part II and sentenced him to suffer imprisonment for two years and ordered compensation of Rs.25,000/- to be paid to the sister of the appellant.

2. Mr. Viegas, learned Counsel appearing for the applicant, submits that the applicant has been employed in Kuwait since 2000 and he was on bail pending the trial and during the trial he did not breach the conditions imposed on him. According to Mr. Viegas if the sentence imposed on the appellant is not suspended and he is not permitted to leave the country to continue with his job at Kuwait, the Applicant would suffer irreparable loss.

3. Ms. Coutinho, learned P.P. submitted that the applicant be not permitted to leave the country, since he is likely to flee on account of the conviction and the mere fact that he was on bail during the trial, is not a ground for grant of suspension of sentence and to grant permission to the applicant to leave the country in order to join his duties of work at Kuwait. She further submitted that the State is contemplating filing of appeal against the judgment of acquittal of the applicant for the offence committed under Section 302 I.P.C.

4. Considering the nature of the offence committed as well as the fact that the applicant was on bail during the trial and that he did not misuse the liberty granted to him and considering the fact that a fixed sentence has been imposed on the applicant, I am inclined to suspend substantive sentence of two years imposed on the applicant and release him on bail. Since the applicant is likely to lose the job in the event he is not

permitted to leave the country, I am inclined to grant permission to the applicant to leave the country and continue his job at Kuwait. However, it would be just and proper to grant suspension as well as permission to leave the country subject to stringent conditions.

5. Accordingly, I pass the following Order :-

(i) Substantive sentence of imprisonment imposed on the applicant is suspended upon the applicant depositing cash security of Rs.50,000/- in this Court;

(ii) The applicant shall furnish surety bond in the sum of Rs.50,000/- to the satisfaction of the Registrar of this Court;

(iii) The applicant shall furnish his local address as well as the address at Kuwait where he is going to serve, to the Registrar of this Court while executing the Bond. The applicant shall also furnish any change in address of the applicant within a period of eight days from the change of address, if any.

(iv) The applicant shall report at the Cuncolim Police

Station on 1st September, 1st January, and 1st May of every year during the pendency of the appeal.

(v) The applicant shall also remain present in this Court at the time of hearing of the Criminal Appeal No.24/06.

6. In case of breach of the Conditions (iv) and (v), the suspension of the sentence and bail, as well as permission granted to the applicant to leave the country shall stand cancelled and the respondent will be at liberty to take appropriate steps in the matter.

The applications stand disposed of in aforesaid terms.

A. P. LAVANDE, J.

sl.